

### REMARKS

Claims 1, 2, 5, 8 – 11 and 19 are under examination. Claim 19 is currently amended. Claims 3, 6, 7 and 12 – 18 are withdrawn. This application as filed supports all changes to the claims. No claims are allowed.

#### Telephone Interview

Applicants thank Examiner A for the courtesy of a telephone interview on June 17, 2005 in which the outstanding Office Action and the Examiner's interpretation of the references of record applied against the claims were discussed. The following Remarks respond to the outstanding Office Action in light of the Examiner's comments in this telephone interview.

#### Amendment to Claim 19

Currently amended claim 19 includes a sub-paragraph that original claim 19 inadvertently omitted. The last sub-paragraph of original claim 19 refers to "either of the first and second ledges on the adjacent blocks." However, original claim 19 failed to provide antecedent basis for the second ledge. Currently amended claim 19 completes original claim 19 by adding the fifth sub-paragraph (currently amended claim 19 now includes a preamble and six sub-paragraphs). This amendment adds no new matter. This amendment is not made to patentably distinguish over any references of record or to overcome any rejections of record.

#### Restriction and Election of Species Requirement

Applicants confirm the election of the Examiner's Group I, the species of FIGS. 2A – 8, without traverse. Claims 3, 6, 7 and 12 – 18 remain withdrawn from examination.

Drawings

The Examiner is requested to acknowledge in the next Office Action that the drawings are accepted or to note any specific objections thereto.

Rejections Under 35 U.S.C. § 102

Claims 1, 2, 4, 5, 8 – 11 and 19 are rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,069,015 to Steinwender. Applicants traverse this rejection. It is elemental that in order for a reference to anticipate a claim, the reference must disclose all limitations as recited in the rejected claim.

During the telephone interview of June 17, 2005, the Examiner clarified his interpretation of Steinwender as set forth in the outstanding Office Action. The Examiner stated that he directed his comments in the outstanding Office Action to a portion of the Steinwender block identified as transition stone 32b (FIG. 2, col. 4, lines 9-11, *inter alia*). Examiner A further explained that he interpreted the Steinwender tongue 28 portion (col. 3, line 66-col. 4, line 2, *inter alia*), “sliced-off” or separated from transition stone 32b, as anticipating present claims 1, 2, 4, 5, 8 – 11 and 19.

The Manual of Patent Examining Procedure discusses the requirements for claim anticipation. M.P.E.P. § 2131. To anticipate a claim, the reference must teach every element of the claim. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). See also M.P.E.P. § 2131.02.

Steinwender, by itself or according to the Examiner’s interpretation thereof, does not meet the requirements of 35 U.S.C. § 102(b) to anticipate any of the presently rejected claims. This response will examine each phrase of the statement of the rejection, as further explained in the telephone interview of June 17, 2005, to point out the errors in the rejection’s interpretation of Steinwender. For reference, capital letters identify the following paragraphs.

A. “Steinwender (figure 2) shows a landscaping block (20) ...” Element 20 of Steinwender is not a single block, but a keystone set (Steinwender, col. 3, lines 50-54, *inter alia*), including structurally identical transition stones 32a, 32b (Steinwender, col. 4, lines 11-18, *inter alia*) and the two-part keystone 36a, 36b (Steinwender, col. 4, lines 23-27, *inter alia*). In the telephone interview of June 17, 2005, Examiner A explained that he actually intended the numeral 20 to reference the transition stone 32b.

B. “[C]omprising a top surface and an opposed bottom surface, first and second opposed sides (of part 28) ...” During the telephone interview of June 17, 2005, Examiner A explained that he considered the tongue 28 portion, as “sliced off” or physically separated from transition stone 32b, to anticipate rejected claims 1, 2, 4, 5, 8 – 11 and 19.

This does not state a valid interpretation of Steinwender, according to the requirements set forth in M.P.E.P. § 2131 and the authorities cited therein, and cannot form the basis of a sustainable rejection under 35 U.S.C. § 102(b). Independent claims 1 and 19 claim a “block,” not a portion of a block. Independent claim 9 claims a “block system” calling for specific features for “each block.” The tongue 28 portion of Steinwender transition stone 32b is not a “block,” but only an integral, unitary, indivisible feature of a block. One of ordinary skill in this art would recognize that “slicing off” or physically separating the tongue 28 portion from Steinwender transition stone 32b would render Steinwender inoperative for its disclosed purpose. Note that Steinwender teaches (col. 1, lines 36-45):

In this case, the invention is based on the notion that the above-mentioned disadvantages of known stone formats can be overcome by forming the individual stones with substantially radial tongue-and-groove devices, so that they can be inserted into one another radially and thus mutually position and stabilise one another within the arch-like support structure. At the same time, the stability is significantly improved [sic – improved] against lateral pressure from the lime body due to the tongue-and-groove formation.

There is no explicit or implicit teaching or suggestion in Steinwender that the tongue 28 portion can be “sliced off” or physically separated from transition stone 32b. To do so would destroy the tongue-and-groove features of the Steinwender stones and render the keystone set and the associated arch structurally unstable and inoperable for their intended purpose.

The remainder of the rejection’s interpretation of Steinwender need not be considered, because the analysis thus far establishes that Steinwender does not anticipate independent claims 1, 9 and 19. Under any other valid interpretation, Steinwender does not anticipate the present claims. Claims 2, 4, 5 and 8,

dependent on claim 1, and claims 10 and 11, dependent on claim 9, add other patentable features that further distinguish over Steinwender.

Steinwender does not anticipate claims 1, 2, 4, 5, 8 – 11 and 19 and withdrawal of this rejection is in order.

Claims 1, 2, 4, 5, 8 – 11 and 19 are rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 5,984,589 to Ciccarello. Applicants traverse this rejection. It is elemental that in order for a reference to anticipate a claim, the reference must disclose all limitations as recited in the rejected claim.

During the telephone interview of June 17, 2005, the Examiner clarified his interpretation of Ciccarello as set forth in the outstanding Office Action. The Examiner stated that he interpreted Ciccarello, Fig. 10 as being a single block, although Ciccarello clearly describes Fig. 10 as illustrating three separate, individual blocks 10 (col. 2, lines 52-54 and col. 4, lines 57-64, *inter alia*) in assembly with each other by means of their arresting pin elements 17 (col. 3, line 58-col.4, line 16, *inter alia*). Examiner A further explained that he interpreted the three separate, individual blocks of Ciccarello, Fig. 10, in assembly with each other by means of their arresting pin elements 17, as anticipating present claims 1, 2, 4, 5, 8 – 11 and 19.

The discussion above of M.P.E.P. § 2131 and the authorities cited therein is repeated here as equally pertinent.

Ciccarello, by itself or according to the Examiner's interpretation thereof, does not meet the requirements of 35 U.S.C. § 102(b) to anticipate any of the presently rejected claims. This response will examine each phrase of the statement of the rejection, as further explained in the telephone interview of June 17, 2005, to point out the errors in the rejection's interpretation of Ciccarello. For reference, Roman numerals identify the following paragraphs.

I. “Ciccarello (figure 10) shows a landscaping block comprising a top surface and an opposed bottom surface, first and second opposed sides (the bigger lower part 13) ...” Ciccarello (Fig. 10) does not show a single landscaping block, but three individual blocks 10 in assembly with each other by means of their arresting pin elements 17. Ciccarello describes the features of each individual wall construction block 10 (Fig. 1, col. 2, lines 27-28, col. 3, lines 10-17):

The wall construction block 10 has opposed parallel flat top and bottom surfaces 11 and 12 respectively, a front wall 13 and a rear wall 14 and opposed flat end walls 15 and 15'. As herein shown the end walls 15 and 15' are inclined rearwardly whereby to provide a wall construction block 10 which may used to construct straight or curved walls which may be erected with the front faces aligned vertically or set back to construct an inclined retaining wall ...

Ciccarello describes the features of each individual arresting pin element 17 (Fig. 2, col. 2, lines 30-31, col. 3, line 58-col.4, line 16):

[T]he arresting pin elements 17 are elongated pins having a length which is no greater than the thickness of the blocks that [they] are intended to be utilized with. These pins also have a cross-section for close sliding fit within the pin receiving channels 16 and 16'. ... [T]he arresting pin element 17 has an elongated tapered section which terminate [*sic* – terminates] at an outer narrow elongated flat face 22. They are also provided with an elongated flat rear face 23 which is disposed substantially parallel to the elongated frontal narrow flat face 22. These faces are interconnected by opposed convexly curved elongated side faces 24 which are configured to match the curved side wall portions 21 of the channels.

The Examiner’s interpretation of Ciccarello, Fig. 10, as set forth in the outstanding Office Action or as explained in the telephone interview of June 17, 2005, does not state a valid interpretation of Ciccarello, according to the requirements set forth in M.P.E.P. § 2131 and the authorities cited therein, and cannot form the basis of a sustainable rejection under 35 U.S.C. § 102(b). Independent claims 1 and 19 claim a “block,” not an assembly of separate blocks

and pin elements. Independent claim 9 claims a “block system” requiring specific features for “each block,” not an assembly of separate blocks and connecting pin elements. One of ordinary skill in this art would recognize that a single unitary block having the combined features of three separate individual Ciccarello blocks, assembled together by means of the Ciccarello defined pin elements, would render Ciccarello inoperative for its disclosed purpose. Note that Ciccarello teaches (col. 1, lines 50-56):

It is a feature of the present invention to provide a wall construction block for constructing earth retaining walls which may be straight, inclined or curved walls by utilizing transverse arresting pin elements which are fitted in pin receiving channels disposed transversely in the block ends wherein blocks in adjacent rows are prevented from lateral shifting.

A wall constructed with Ciccarello’s blocks 10 arranged with their opposed flat end walls 15 and 15' aligned together, as shown and described with reference to Fig. 10, could not construct a straight wall. To construct a straight wall, Ciccarello’s blocks 10 must be arranged as shown in Fig.2, with the front walls 13 and rear walls 14 of adjacent blocks, respectively, forming a straight line. Also, see Fig. 9, illustrating the arrangement of adjacent single blocks 10 to form a wall with a straight line, at 41, a convex curve, at 43, and a concave curve, at 42 (col. 2, lines 50-51, col. 4, lines 52-57):

FIG. 9 is a schematic diagram showing a curved earth retaining wall 40 constructed with the blocks 10 of the present invention. As herein shown, the blocks may be positioned either in a straight line as shown at 41, or in a concavely curved manner, as shown at 42, or in a convexly curved manner, as shown by the blocks at 43.

The remainder of the rejection’s interpretation of Ciccarello need not be considered, because the analysis thus far establishes that Ciccarello does not anticipate independent claims 1, 9 and 19. Ciccarello, under any other valid interpretation, does not anticipate the present claims. Claims 2, 4, 5 and 8,

dependent on claim 1, and claims 10 and 11, dependent on claim 9, add other patentable features that further distinguish over Ciccarello.

Ciccarello does not anticipate claims 1, 2, 4, 5, 8 – 11 and 19 and withdrawal of this rejection is in order.

### CONCLUSION

Applicants respectfully submit that, with the above amendments and remarks, this application is in condition for allowance. Applicants solicit an action to that effect.

If any additional fees are due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 16-2312. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

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By



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